

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

IN RE:	§	
	§	
LOU LYNN BOGART,	§	CASE NO. 00-50875-13
	§	
Debtor	§	
<hr style="border: 0.5px solid black;"/>		
LOU LYNN BOGART, BELINDA GOODE	§	
AND BELINDA GOODE AS EXECUTRIX	§	
OF THE CLAUDIA BOGART ESTATE,	§	
	§	
Plaintiffs	§	
	§	
v.	§	ADVERSARY NO. 00-5064
	§	
FARM SERVICE AGENCY,	§	
UNITED STATES DEPARTMENT OF	§	
AGRICULTURE,	§	
	§	
Defendants.	§	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This adversary proceeding and the stay motion filed by Farm Service Agency (FSA)¹ were jointly tried on May 23, 2001. Plaintiffs Lou Lynn Bogart and Belinda Goode contend that FSA improperly offset government farm program payments thereby adversely affecting their interest in a 348.1-acre tract of farm land which they inherited from their mother, Claudia Bogart. FSA argues that this court lacks jurisdiction to address the issues raised by the Plaintiffs because the Plaintiffs failed to exhaust required administrative remedies. By its stay motion, FSA contends the automatic stay should be lifted to allow it to proceed with foreclosure of the farm land. At conclusion of the trial, the Plaintiffs, through counsel, requested an opportunity to file a brief addressing the issues raised at trial. The court granted this request and allowed the Plaintiffs 15 days to file a brief. Despite this, the Plaintiffs failed to file a brief in support of their position. Upon consideration of the pleadings, the evidence presented, and the arguments made at trial, the court makes the following findings of fact and conclusions of law.

¹Reference to “FSA” herein includes Farm Service Agency, the United States Department of Agriculture, the United States, and the “Government”.

Findings of Fact

1. The Plaintiff and Debtor, Lou Lynn Bogart, filed this Chapter 13 case on September 5, 2000.
2. On November 20, 2000, Plaintiffs Lou Lynn Bogart, Belinda Goode, and Belinda Goode as Independent Executrix of the Claudia Bogart Estate, filed their original complaint against the Defendant “Farm Service Agency/United States Department of Agriculture”, seeking a determination of rights to the 348.1-acre tract, a determination of the extent and validity of liens against such tract, to recover property of the bankruptcy estate, and a declaratory judgment establishing the value of the 348.1-acre tract. In addition, they seek recovery of government program payments alleged to have been wrongfully withheld by FSA. *See* Plaintiffs’ Pre-Trial Order. FSA contends that this court lacks jurisdiction over this adversary proceeding because the complaint fails to allege a waiver of sovereign immunity, FSA has not consented to suit, the Plaintiffs have failed to first exhaust mandatory administrative remedies concerning the issues raised by the suit, and the Plaintiffs’ claims of improper offset of payments that Plaintiffs contend should have been paid to the Claudia Bogart Estate are unrelated to the bankruptcy case. In addition, FSA contends the Plaintiffs’ suit is barred by laches, and that the Plaintiffs have failed to redeem the real property at issue in accordance with a prior agreed order entered by the court in the bankruptcy case of *In re Claudia Jean Chaney*, Case No. 96-50610 (Ms. Chaney, who is deceased, was the mother of Lou Lynn Bogart and Belinda Goode and is the person from whom they have inherited the real property at issue.). *See* FSA’s Pretrial Order.
3. The parties have stipulated to the facts set forth at paragraphs 1-8 of FSA’s Pretrial Order. Such facts are attached hereto as an addendum and are adopted by the court.
4. At trial, the parties further stipulated that the value of the 348.1-acre tract is \$90,000.00 and that FSA holds an *in rem* claim against the real property.
5. The real property was farmed by Lou Lynn Bogart’s former husband, John W. Jones. As stipulated, Lou Lynn Bogart (then Lou Lynn Jones) and Mr. Jones both signed the notes made payable to FSA (then Farmers Home Administration). Although they did not at such time own an interest in the property, they both also signed the deeds of trust. *See* FSA Ex. 3.

6. Claudia Bogart, Lou Lynn Bogart's and Belinda Goode's mother, died May 24, 1997. Lou Lynn Bogart and Belinda Goode inherited the 348.1-acre tract from their mother. Belinda Goode is the Executrix of the Claudia Bogart Estate. She "signed-up" the Claudia Bogart Estate for participation in the Conservation Reserve Program (CRP), the Production Flexibility Contract Program (PFCP), and the Market Loss Assistance Program (MLAP). Exs. P-5 and P-13.

7. On September 26, 1997, FSA, through Mark D. Latham, Ag Credit Manager in the FSA Plainview, Texas office, sent a letter to the National Appeals Division in Lakewood, Colorado, regarding the "Estate of Claudia J. Bogart and FSA: NAD Case No. 97-001286W." Such letter stated that "the adverse action that resulted in the request for appeal described above has been withdrawn. This Borrower is no longer being considered for administrative offset due to the fact that the final due date of the loans were over 10 years ago and the Agency's right to offset has expired." Ex. P-6. A copy of the letter was sent to the Estate of Claude J. Bogart. Apparently, FSA had attempted offsets prior to September 26, 1997, which resulted in an appeal taken by the Estate of Claudia J. Bogart. Ms. Goode credibly testified that the Estate received a letter notifying of an offset and informing it that an appeal of such adverse action, i.e. the offset, must be taken within 20 days to the National Appeals Division. She did in fact pursue an appeal which culminated in the September 26 letter from Mr. Latham.

8. Belinda Goode and her husband are also indebted to FSA and are presently enrolled in various government farm programs.

9. After September 26, 1997, and running through April, 2001, FSA offset in excess of \$30,000.00 of government program payments payable to the Claudia Bogart Estate on account of the PFCP, the MLAP, and the CRP. Ex. P-13. The Claudia Bogart Estate received the CRP payment for the year 2000, though it was not received until April, 2001.

10. The actual offsets effected by FSA and the debts against which they were applied are set forth on FSA's Exhibit 1, a copy of which is attached and incorporated herein. FSA admits that some of the offsets were improperly applied. The non-CRP payments (as identified on FSA's Exhibit 1) that were offset should have been applied against the personal debt of Don and Belinda Goode. FSA also admits that the \$861.35 that resulted from

Lou Lynn Bogart's 1999 income tax refund was improperly offset as the debt against which it was offset no longer existed.

11. There are presently ad valorem taxes owing against the real property in an amount in excess of \$6,700.00. Ex. P-7. Ms. Goode testified that the ad valorem taxes would be paid by the Claudia Bogart Estate.

12. Ms. Bogart admitted that she received notice of offsets against both the Claudia Bogart Estate and against her and her husband, as well. She was therefore aware that FSA was offsetting government payments in 1997, 1998, and 1999. She has not, on behalf of either herself or the Claudia Bogart Estate, appealed the propriety of these offsets. Nor has Lou Lynn Bogart appealed the propriety of the offsets.

13. An agreed order was entered in the bankruptcy case of Claudia Bogart, then Claudia Jean Chaney, on May 12, 1997, twelve days prior to her death, that provided FSA would not foreclose the real property for 120 days to allow her children an opportunity to purchase the property by tendering the full market value of the property. FSA's Ex. 6. The fair market value of the property was not tendered in accordance with the agreed order. Despite this, FSA did not proceed with foreclosure after expiration of the 120-day period.

14. In October, 1999, a new appraisal was performed on the real property and FSA submitted a proposal to Belinda Goode, acting on behalf of the Claudia Bogart Estate, granting her, on behalf of the Estate, an opportunity to again "redeem" the real property. Belinda Goode, on behalf of the Estate, failed to do so and the property was posted for foreclosure in August, 2000, for a sale in September, 2000, which ultimately resulted in the present bankruptcy filing.

15. If appropriate, these findings of fact shall be considered conclusions of law.

Conclusions of Law

A. Jurisdiction

16. The threshold question before the court is whether the court has jurisdiction to entertain the issues raised by this adversary proceeding. In this regard, FSA's claim that the bankruptcy court lacks jurisdiction to hear the adversary proceeding because of the Plaintiffs' failure to properly exhaust their administrative remedies is persuasive.

17. 7 U.S.C. § 6912(e) states:

(e) Exhaustion of administrative appeals

Notwithstanding any other provision of law, a person shall exhaust all administrative appeal procedures established by the Secretary or required by law before the person may bring an action in a court of competent jurisdiction against –

- (1) the Secretary;
- (2) the Department; or
- (3) an agency, officer, or employee of the Department.

18. In reviewing § 6912(e), the courts have found that the “[s]tatutory exhaustion requirements are mandatory, and courts are not free to dispense with them.” *Bastek v. Federal Crop Ins. Corp.*, 145 F.3d 90, 94 (2d Cir. 1998); *In re Bentley*, 234 B.R. 12 (N.D. N.Y. 1999). In an action brought against officers and employees of the Department of Agriculture, the court must determine whether “all administrative appeal procedures” have been exhausted. *In re Bentley*, 234 B.R. at 17. The *Bentley* court observed that “the exhaustion requirement requires that a party exhaust all administrative appeal procedures established by the Secretary before the person may bring an action in a court of competent jurisdiction. . . . 7 U.S.C.A. 6912 (West Supp. 1998) (emphasis added).” *Id.* at 19. Moreover, “[a]s the Second Circuit noted, [i]t is hard to imagine more direct and explicit language requiring that a plaintiff suing the Department of Agriculture, its agencies, or employees, must first turn to any *administrative avenues* before beginning a lawsuit. *Bastek*, 145 F.3d at 94-95 (emphasis added) (alterations in original) (quoting *Gleichman v. United States Dep’t of Agric.*, 896 F.Supp. 42, 44 (D. Me. 1995)).” *Id.* at 19.

19. The requirement that a plaintiff exhaust his administrative remedies can be of two types: (1) it can be mandated by federal statute or (2) it can be imposed through the judicially created doctrine of exhaustion. *Calhoun v. USDA FSA*, 920 F.Supp. 696 (N.D. Miss. 1996) (held that a plaintiff’s failure to exhaust administrative remedies, by seeking review of FSA’s decision to classify him with other prospective purchasers when property was resold, deprived court of subject matter jurisdiction to consider statutory questions raised by plaintiff’s lawsuit). “There is a distinct difference between statutory mandated exhaustion of administrative remedies and the judicially created doctrine of exhaustion of administrative remedies.” *Information Resources, Inc. v. United States*, 950 F.2d 1122, 1126

(5th Cir. 1992)²; see also *Power Plant Div., Brown & Root, Inc. v. Occupational Safety & Health Review Comm.*, 673 F.2d 111, 115 (5th Cir. Unit B 1982).” *Id.* at 699-700. “When the requirement is mandated by statute, exhaustion becomes a jurisdictional prerequisite to maintaining an action. *E.g., Wilson v. Sec., Dept. of Veterans Affairs*, 65 F.3d 402, 404 (5th Cir.1994) (stating statutory exhaustion jurisdictional prerequisite to Title VII action); *Shah v. Quinlin*, 901 F.2d 1241, 1244 (5th Cir.1990) (stating statutory exhaustion jurisdictional prerequisite to claim under Federal Tort Claims Act); *Gustin v. Internal Revenue Serv.*, 876 F.2d 485, 488 (5th Cir.1989) (stating statutory exhaustion jurisdictional prerequisite to claim for refund of federal income taxes).” *Id.* at 700.

20. “While judicial discretion in the application of statutorily mandated exhaustion is severely limited, a few narrow exceptions may apply. See *Greater Slidell Auto Auction, Inc. v. American Bank & Trust Co.*, 32 F.3d 939, 942 n. 2 (5th Cir. 1994) (noting exceptions to statutory exhaustion where 1) claimant asserts constitutional challenge collateral to his substantive claim, 2) administrative system itself is unlawful or unconstitutional, or 3) administrative remedies are inadequate).” *Id.* at 700.

21. In this case, FSA effected several offsets, in 1997, 1998, and 1999, after the September 26, 1997, letter from Mark D. Latham advising there would be no more administrative offsets, which was sent regarding a prior offset. Ms. Goode was aware of these post September 26, 1997, offsets.

22. No evidence was presented nor argument made regarding whether the Plaintiffs can still timely appeal FSA’s actions in offsetting the farm program funds.

23. The Plaintiffs have made no argument nor presented any authority to support their position that they are not required to exhaust all administrative appeal procedures. Nor have they raised any of the exceptions to statutory exhaustion.

²*Information Resources, Inc. v. United States*, 950 F.2d 1122, 1126 (5th Cir.1992), *overruled on other grounds and superceded by statute as stated in Shaw v. U.S.*, 20 F.3d 182 (5th Cir. 1994) (holding distinguishable because at time of plaintiff’s suit the specific statute had not yet been amended to provide that exhaustion is statutorily required). While *Information Systems* was overruled and superceded by statute, the Fifth Circuit still holds that while courts may exercise discretion in applying the judicially created doctrine of exhaustion, such discretion is severely limited with respect to a statutory exhaustion requirement because failure to exhaust deprives courts of jurisdiction. *Townsend v. U.S. Department of Justice I.N.S.*, 799 F.2d 179 (5th Cir.1986) (“When exhaustion is statutorily mandated, the requirement is jurisdictional”). “This circuit, for example, has expressly disavowed the futility exception with respect to statutory exhaustion.” *Power Plant Division, Brown & Root v. Occupational Safety and Health Review Commission*, 673 F.2d at 115 (5th Cir. 1982).

24. This adversary proceeding falls within the clear wording of 7 U.S.C. § 6912(e). The Plaintiffs have not appealed FSA's offsets and, therefore, this court does not have jurisdiction over the issues raised by this adversary proceeding.

B. Relief from Stay

25. One of the arguments made by FSA in connection with its motion seeking relief from the stay is that the Plaintiffs are subject to the prior agreed order that was entered in the Claudia Jean Chaney bankruptcy case, Case No. 96-50610, which such agreed order provided that FSA would not foreclose for 120 days thereby allowing Ms. Chaney's children, the Plaintiffs here, an opportunity to obtain financing for purchase of the real property. This was the sole condition restricting FSA's right to foreclose the real property. The Plaintiffs were apparently unable to purchase the property. Despite this, FSA held off from foreclosing the property and gave the Plaintiffs yet another opportunity to effectively redeem the property. Other than general statements that they intend to pay for the land through a plan in this bankruptcy case, the Plaintiffs presented no evidence indicating they have the resources necessary to present a viable and feasible plan. As the land is subject to an *in rem* lien in favor of FSA, there can be no equity in the land. This is the second bankruptcy case and involves a dispute stretching over several years.

26. The Plaintiffs have had sufficient chances to salvage the property but have clearly been unable to do so.

27. Given the circumstances, the court will not disturb FSA's rights under the agreed order. Accordingly, the court finds that cause exists for granting relief from the stay and that the stay will be modified to allow FSA to proceed in accordance with its rights.

28. The court will prepare orders in accordance with these findings and conclusions.

29. If appropriate, these conclusions of law shall be findings of fact.

Signed July 23, 2001.

ROBERT L. JONES
UNITED STATES BANKRUPTCY JUDGE